

# **DRAFT FOR PUBLIC REVIEW AND COMMENT**

**December 23, 2002**

**Village of Croton-on-Hudson  
Village Board of Trustees  
Statement of Findings  
Regarding Renewal of the Special Use Permit for  
Metro-Enviro Transfer LLC – Croton-on-Hudson Waste Transfer Station**

Pursuant to the Village of Croton-on-Hudson Zoning Code (“Village Code”) Section 230-56 and other applicable authority, the Village Board of Trustees makes the following findings regarding Metro-Enviro Transfer LLC – Croton-on-Hudson Waste Transfer Station (“the Facility”):

## **I. Background**

In 1984, the land on which the Facility is located (“the Site”) was purchased by Robert V. Liguori. He proposed to change the operations on the Site from materials storage to wood processing and recycling. Subsequently, the Zoning Board of Appeals determined that the use of the Site had changed from one nonconforming use to another. Under what is now Village Code § 230-53A.(2), this triggered the need for a special use permit from the Village Board. A special use permit allowing wood processing and recycling was applied for and granted in 1988 to Industrial Recycling Systems, a company owned by Mr. Liguori. Since then, operations at the Site have been carried out subject to various special use permits with various conditions.

In late 1994, Mr. Liguori applied to New York State Department of Environmental Conservation (“DEC”) for modification of the applicable solid waste management permit in order to expand the range of construction and demolition debris (“C&DD”) that could be accepted from only materials attached to wood waste to a broader range of C&DD. In early 1995, Mr. Liguori applied for modification of the site plan and to increase the amount of material that could be processed. The application named Harmon Recycle & Rail, in place of Industrial Recycling Systems. The Planning Board undertook a land use analysis and SEQRA analysis of the application and held public hearings on the application in June 1995. In July 1995, the Planning Board, as lead agency, adopted a negative declaration under SEQRA with respect to the application and approved the modified site plan.

In 1995, because Mr. Liguori was continuing to accept material but failing to timely ship it offsite, large amounts of material accumulated on site in violation of the DEC permit and the Village special use permit. In February 1996, Mr. Liguori entered into a consent order with DEC that required remediation of on-site conditions, including removal of the stockpiled materials, and payment of a \$35,000 fine. At the same time, DEC granted the permit modification he had applied for in 1995. In May 1996, the

Planning Board approved an amendment to the site plan, with an accompanying negative declaration under SEQRA, to permit the construction of a concrete retention pad pursuant to the DEC Consent Order as well as other proposed changes. In December 1996, DEC issued another notice of non-compliance based on Mr. Liguori's failure to remove the stockpiled materials. At the same time, Metro Enviro LLC offered to purchase the property and remedy all existing violations, as well as perform the site work necessary to bring the Facility into compliance with the DEC Consent Order and existing site plan.

In Spring 1997, Greentree Realty LLC purchased the Site from Mr. Liguori and granted a lease to Metro Enviro LLC. The latter remedied the violations, and applied for a DEC Part 360 permit to operate a C&DD transfer station on the site. In August 1997, Metro Enviro LLC requested renewal and transfer of the special use permit to itself from Industrial Recycling Systems. The Village Board referred the request to the Planning Board for review in September 1997. In November 1997, DEC issued a Part 360 permit to Metro Enviro LLC to operate a C&DD processing facility on the Site. DEC also imposed various special conditions on the Part 360 permit, including the funding of an environmental monitor for the Facility by the applicant as well as various recordkeeping and reporting requirements. On November 25, 1997, the Planning Board recommended to this Board that the special use permit be granted.

The Village Board undertook a SEQRA review of the special use permit application, convened a citizens committee to review the application, and held public hearing sessions on the Metro Enviro LLC special use permit application between December 15, 1997 and May 4, 1998. On May 4, 1998, this Board adopted a negative declaration under SEQRA with respect to the application and issued Metro Enviro LLC a new three-year special use permit, with conditions, including that the processing area be enclosed in a building, effective May 5, 1998. Metro Enviro LLC did not take legal action to challenge any of the terms of the new special use permit. In late 1998, Metro Enviro LLC obtained from the Planning Board a side yard area variance and a modification of the DEC permit to allow construction of a metal building above the processing pad, as well as installation of the rail spur. In January 2000, counsel for Metro Enviro LLC notified this Board of the contemplated sale of the lease to the Site to Metro Enviro Transfer LLC ("Metro Enviro Transfer"), a subsidiary of Allied Waste Industries Inc. ("Allied"). In March 2000, Metro Enviro Transfer purchased a lease to the Site. Metro Enviro Transfer did not take any legal action to challenge any of the terms of the special use permit. The ownership of the land did not change.

Metro Enviro Transfer made a timely request that the Village Board renew the special use permit in March 2001. Since that time, the special use permit has been extended twelve times and its renewal has been discussed extensively in public at the following meetings of this Board: May 7, 2001; September 4, 2001; November 19, 2001; February 4, 2002; March 4, 2002; April 1, 2002; June 10, 2002; September 9, 2002; October 21, 2002; and December 16, 2002. The May 7, 2001 meeting was officially noticed as a public meeting at which all were allowed to speak. Representatives of Metro Enviro Transfer spoke at all of these meetings, except November 19, 2001. Members of the public spoke about the permit renewal on May 7, 2001, November 19, 2001,

September 9, 2002, October 21, 2002 and December 16, 2002. The latest extension, granted on December 16, 2002, runs until the midnight on January 21, 2003.

## II. Terms of the Special Use Permit

The special use permit governing operation of the Facility includes provisions limiting the type of waste that may be accepted at the Facility (§§ 1-2, 7), the permissible operations on site (§§ 3-6), the hours of operation (§ 31), the tonnage of material that may be processed on site (§§ 32-33), and certain physical improvements at the Site (§§ 35-38), among other items. The special use permit also requires that the Facility comply with all conditions, restrictions and limitations in the Facility's DEC permit (§§ 18, 26), with the provisions of the Operation & Maintenance ("O&M") Manual (§§ 19, 26), and with the performance standards of the Village Zoning Law (§ 20).

In Paragraph 40 of the permit, a procedure is laid out for revoking the permit if there is even a single violation of any permit condition. This paragraph states "[t]he Village Board may suspend or revoke this permit after a public hearing . . . where it finds that the permittee has not complied with any or all terms of this permit." As noted above, neither Metro Enviro LLC nor Metro Enviro Transfer has challenged this or any other provision of the special use permit.

Chapter 230-56 of the Village Code governs renewal of special use permits. It provides:

The grant of a special use permit for the use indicated therein may be conditioned on periodic renewal, which renewal may be granted only following upon public notice and hearing. *Such renewal shall be withheld or granted subject to terms and conditions additional to or different from those in the original grant only upon a determination that:*

A. The factors which justified the original grant no longer exist or have changed sufficiently to require additional or different terms and conditions; or

B. *The terms and conditions of the original special permit have not been or are not being complied with, wholly or in part.* A notice of violation pursuant to § 230-81 shall be prima facie evidence of lack of conformity with such terms and conditions.

(Emphasis added)

### **III. Violations of the Terms of the Special Use Permit**

Numerous violations of the special use permit have occurred since Metro Enviro Transfer, a subsidiary of Allied, assumed operation of the Facility in March 2000. These violations (to the extent that the Village is aware of them) are summarized below.

#### **A. Receipt of Industrial Waste**

The special use permit and the DEC permit both prohibit the Facility from accepting industrial waste. Notwithstanding these prohibitions, on numerous occasions since Metro Enviro Transfer took control of the Facility in March 2000, industrial waste has been accepted there. This fact first came to light, not at the initiative of Allied, but due to the monitoring activities of Walter Mack, who was appointed by Judge Jed Rakoff of the U.S. District Court for the Southern District of New York in connection with the federal prosecution of various criminal individuals and entities that operated the Facility and other solid waste operations before Allied bought them. Mr. Mack's investigations have revealed a number of ongoing violations of the state and local environmental laws at the Facility during the tenure there of Allied entities. A further report from Mr. Mack concerning the Facility is now expected.

Following Mr. Mack's revelations, Metro Enviro Transfer admitted that Facility personnel knowingly directed industrial waste from the Englehard Corporation's Peekskill Films Plant to the Facility, and the Facility accepted this waste on at least 18 occasions between February 2, 2001 and March 19, 2001. Metro Enviro Transfer has also admitted that on, at minimum, 24 other occasions, including four times in 2002, industrial waste from the Englehard Corporation was processed at the Facility.

The Village Manager issued a Notice of Violation relating to the 18 loads accepted between February 2, 2001 and March 19, 2001 on August 9, 2002, shortly after the relevant information was disclosed by Metro Enviro Transfer. The Board discussed the acceptance of these 18 loads of industrial waste and imposed a fine at its meeting on September 9, 2002. Metro Enviro Transfer explained at the meeting that Matt Hickey, then a General Manager of Allied, made arrangements for these loads to be taken to the Facility. Charles Marino, the site manager at the time, knew the loads were not C&DD and protested accepting the loads. Despite his protests, however, Mr. Hickey directed Mr. Marino to accept the loads. The loads were then processed with general C&DD.

After this processing, the loads were shipped for disposal to the CLD Landfill, a C&DD landfill operated by BFI Corporation (an Allied subsidiary) at 9960 Southrange Road, Salem, Ohio 44460 under Bills of Lading that falsely identified the contents to be C&DD. Mr. Marino, the Site Manager at the time, signed the Bills of Lading, even though he knew that the waste was partially industrial waste.

Independent research by the Board's special counsel indicates that the CLD Landfill is only licensed to accept C&DD and that waste from Englehard is classified as industrial waste under OHIO ADMIN. CODE § 3745-29-01 A. The Board has asked Metro Enviro Transfer to provide the legal justification for acceptance of this material by the

CLD Landfill. No response has been received. In the absence of a satisfactory explanation, the Board must assume that the CLD Landfill accepted the material from the Facility in violation of Ohio law. This, in turn, would be a violation of the DEC permit (which requires waste from New York transfer stations to be disposed in a lawful manner, even if out of state) and, therefore, of the Village's special use permit (which incorporates the DEC permit by reference).

The Board notes that counsel to Metro Enviro Transfer stated at the September 9, 2002 Village Board meeting that Mr. Hickey directed the industrial waste to go from the Facility in Croton-on-Hudson to another Allied-affiliated transfer station in Mt. Kisco in March 2001. Counsel also explained that Mr. Hickey's employment with Allied was terminated for cause in October 2001. At the same meeting, John DiNapoli, the regional engineer for Allied, stated that Allied owns a facility in Niagara Falls that could take such waste and did not contradict statements that Mt. Kisco was not authorized to take industrial waste. Representatives of the Village of Mount Kisco have confirmed that the transfer station there was, in fact, not authorized to accept industrial waste.

Though Metro Enviro Transfer had admitted to 18 improper shipments, at the September 9, 2002 meeting the Village Attorney pointed out that Allied had actually identified 23 shipments coming from Englehard's Peekskill Films Plant, including one on January 2, 2002, and asked how Allied knew that the additional five were not industrial waste. Allied's counsel stated that the federal monitor had not identified these loads as industrial waste and "there are two sections to the facility, one of which has material that would potentially or likely be classified as industrial material. The other does not. To the best of Allied's information those other five loads are C and D or other non-industrial loads." Later Mr. Di Napoli stated that Allied believed these loads to be "C and D material." As discussed below, Metro Enviro's latest letter on the matter states that five additional loads of industrial waste came from Peekskill Films to the Facility, including one in 2002. It is thus apparent that the five loads that Allied claimed were C&DD at the September 9, 2002 meeting have now been identified as industrial waste.

In a letter to this Board of October 11, 2002, Metro Enviro Transfer's counsel stated "DEC has not cited Englehard as a hazardous waste generator." In fact, a search of online databases of the United States Environmental Protection Agency has revealed that Englehard's Peekskill Film Plant, where the first 18 loads of waste originated, is a conditionally exempt small quantity generator under the Resource Conservation and Recovery Act ("RCRA"), a federal statute governing storage, treatment and disposal of hazardous wastes. Counsel has been asked to clarify the meaning of his statement in this regard, but the Board has not yet received a clarification of this point.

On December 9, 2002, the Village received a letter dated December 2, 2002 from Metro Enviro Transfer that admitted that 24 loads of industrial waste had been shipped to the Facility from three Englehard plants in addition to the 18 that had previously been disclosed. According to this letter, five of these 24 loads came from Peekskill Film, seven from Peekskill Pigment and 12 from the Ossining plant. Four of these additional loads were received in 2002 and 18 in 2001. Exact dates were not supplied by Metro Enviro Transfer and the letter implies that the contents of the additional loads were not

documented. Clarification of these points has been requested from Metro Enviro Transfer, but no response has yet been received. Regulatory information available online shows that Peekskill Pigments is a large quantity generator of hazardous waste under RCRA and that the Ossining Plant filed a hazardous waste report with DEC in 1998. The Village issued a Notice of Violation for these loads on December 11, 2002. Metro Enviro Transfer has not stated whether or not any of the industrial waste loads shipped from the Engelhard factories to the Facility included hazardous wastes, but it is known that some of these factories do in fact generate hazardous waste.

#### B. Other Violations

Capacity Exceedance and Record Falsification - At the Board meeting on June 18, 2001, Peter Lindemulder, Regional Vice President of Allied, admitted that the capacity limits set for the transfer station in the special permit and the DEC permit were violated on 25 occasions between March 22, 2000 and August 21, 2000. Mr. Lindemulder also admitted that an employee at the Facility falsified the daily tonnage reports given to the Village by running the computer summary early, if the tonnage for the day was approaching the daily limit, and booking the remaining loads to the next day.

At the Board meeting on February 4, 2002, counsel to Metro Enviro Transfer explained that the company would be entering into a consent order with DEC regarding recordkeeping errors, dust problems and tonnage overages. Counsel explained that the tonnage records kept at the loaders did not match with the record of tonnage going into the facility. On February 11, 2002, the Village Engineer issued a Notice of Violation for maintenance of inaccurate and unreliable tonnage records in 2000 and 2001 and inadequate supervision to prevent unacceptable record keeping in violation of special permit condition 34. A twenty sixth violation of the capacity limit was disclosed in a letter to the Village from David Steinmetz on February 28, 2002.

Stockpiling of Tires - In mid-2002, the Village became aware that Metro Enviro Transfer's practice was to store tires that were accepted into the facility in a container until that container was full, in violation of Special use permit paragraphs 1, 2, 3, 7 and 18, and DEC Permit Special Condition 16. The Village Manager issued a Notice of Violation on June 12, 2002, because tires are prohibited material under the both permits and Metro Enviro Transfer is required to promptly remove them from the property.

Failure to Provide All Required Training - Inspection of the training records of the Facility on November 26, 2002 revealed that some of the O&M Manual requirements with respect to training were not being observed. These requirements are incorporated into the special use permit by reference (§§ 19, 26). Specifically: i) no documentation of initial training was maintained at the Facility; ii) monthly safety meetings were not held in 20 of the 32 months that Allied has owned the Facility; iii) not all employees attended the monthly meetings that were held; iv) quarterly compliance training has only been held once in the 10 quarters that Allied has owned the Facility; v) no training has been conducted by a New York certified asbestos inspector regarding recognition of waste potentially containing asbestos and contaminated soils. The Village Manager issued a Notice of Violation covering the lack of training on December 13, 2002. On December

18, 2002, Metro Enviro Transfer responded to the Notice of Violation of December 13, 2002 and proposed various remedies for the future.

A few other less serious violations have occurred since March 2000, when Allied took control of the Site. These are summarized in the following table, along with the violations discussed above.

**Summary of Violations of the Special Use Permit from March 2000 to Date**

<b><u>Violation</u></b>	<b><u>Provision Violated</u></b>	<b><u>Village Notice of Violation Sent and Fine Imposed?</u></b>
Inadequate training and record keeping from March 2000 to date	Special use permit paragraphs 19 and 26.  O&M Manual Section 4.5: Table 2 1); ¶ 2; Table 2 2); Table 2 3); and ¶ 3 b.	Notice of violation issued on December 13, 2002. No fine to date.
Disposal of industrial waste to the BFI CLD Landfill in Ohio that was not authorized to accept it between 2000 and 2002.	Special use permit paragraph 18.  DEC special permit condition 10(c), 16.	No Notice of Violation issued. No fine to date.
Acceptance of 24 loads of unauthorized industrial waste between 2000 and 2002.	Special use permit paragraphs 1, 2, 3, 7 and 18.  DEC Permit Special Condition 10(a) and (b).  6 N.Y.C.R.R. § 360-1.7.	Notice of violation issued on December 11, 2002. No fine to date.
Storage of unacceptable material (vehicle tires) on site beyond the maximum allowable time (12 hours) from November 2001 to June 2002.	Special use permit paragraphs 1, 2, 3, 7 and 18.  DEC Permit Special Condition 16.  6 N.Y.C.R.R. § 360-1.7.	Notice of violation issued on June 12, 2002.
Processing and mishandling two refrigerators on the side of the tipping floor, which are unauthorized waste, on	Special use permit paragraphs 1, 2, 3 and 7.  DEC Permit Special	No notice of violation issued. No fine imposed by Village. Violation noted in DEC Monitor's inspection

<b><u>Violation</u></b>	<b><u>Provision Violated</u></b>	<b><u>Village Notice of Violation Sent and Fine Imposed?</u></b>
June 7, 2002.	Condition 10(b).  6 N.Y.C.R.R. § 360-1.7.	report dated June 6, 2002.
Failure to collect leachate – rainwater observed coming into contact with material outside building and running to rail tracks without being collected in leachate collection tank. Reported March 30, 2001.	Special use permit paragraph 18 and 26.  DEC permit special condition 19.  6 N.Y.C.R.R. § 360-1.7.	No notice of violation issued. No fine imposed by Village. Violation noted in DEC Monitor's inspection report dated March 30, 2001.
Acceptance of 18 additional loads of unauthorized industrial waste between February 2, 2001 and March 19, 2001.	Special use permit paragraphs 1, 2, 3, 7 and 18.  DEC Permit Special Condition 10(a) and (b).  6 N.Y.C.R.R. § 360-1.7.	Notice of violation issued on August 9, 2002. Fine imposed on September 9, 2002.
Annual report for 2000 was filed 29 days late in violation of Part 360 regulations.	Special use permit paragraphs 18 and 26.  DEC permit special conditions 5 and 13  6 N.Y.C.R.R. §§ 360-1.7, 360-16.4(i)(1).	No notice of violation issued. No fine imposed by Village. Violation noted in DEC Monitor's inspection report dated May 15, 2001.
Acceptance of tonnage in exceedance of limit specified on 26 occasions between March 22, 2000 and August 21, 2000.	Special use permit paragraphs 18, 26 and 34.  DEC permit special condition 9.  6 N.Y.C.R.R. § 360-1.7.	Notice of Violation issued on February 11, 2002 for maintenance of inaccurate and unreliable tonnage records in 2000 and 2001, and inadequate supervision. No fine imposed by Village.

Thus, this Board finds that five Notices of Violation have been issued covering numerous violations of special use permit conditions from March 2000, when an Allied



subsidiary took control of the Facility. In addition, at least four additional kinds of violations of the permit conditions have occurred during the same time period.

#### **IV. Decision**

The Facility is located in the Light Industrial LI District. On June 18, 2001, the law governing this district was changed so that a waste transfer station became a prohibited use. Village Code § 230-18 E. This means that the Village has decided that such a use is not compatible with the health, safety and welfare of the community. Notwithstanding this finding, this Board recognizes that non-conforming uses may be continued provided that they do not threaten the health and safety of the community and that they operate in compliance with their permits and other applicable requirements.

The Board has spent many hours hearing testimony about the Facility from Metro Enviro Transfer and from citizens. Several members of the Board have visited the Facility on numerous occasions. Metro Enviro Transfer has been given every opportunity to submit oral and written evidence, and the Board has carefully considered all of this evidence. The Board has extended the initial three-year permit for over 20 months since its expiration to allow careful consideration of this application to renew the permit. While the special use permit gave the Board the authority to revoke the permit for just one violation, the Board has exercised restraint regarding this right in the face of numerous confirmed violations. At this time, however, the Board has gathered enough information to make a final decision.

The Board is particularly concerned with the knowing acceptance and processing of industrial waste. The Facility was sited, designed, built and operated as a transfer station for construction and demolition debris. C&DD is primarily solid material such as wood, pipes, bricks, cement, rebar, and the like. Because it is chemically and physically stable, and tends to have physically recognizable forms, it is less heavily regulated than municipal solid waste, hazardous waste or radioactive waste. The environmental laws impose less onerous controls on the handling, transfer and disposal of C&DD than that of these other materials.

Industrial waste – waste materials from industrial operations – may take many forms; some of it may be hazardous and some may not. It is frequently impossible to discern from its physical appearance the degree, if any, of hazard it poses. It often comes from industrial operations that generate hazardous waste (though the hazardous waste is supposed to be segregated for separate handling).

Metro Enviro Transfer has claimed that the unauthorized receipt of industrial waste at the Facility from Engelhard was caused by Matt Hickey, whose employment with Allied affiliates was terminated for cause in October 2001. Metro Enviro Transfer also stated its belief that five later loads from the same source were not industrial waste. Despite this, these five later loads were recently acknowledged by Metro Enviro Transfer to be industrial waste, and 19 other loads of suspected industrial waste were identified, including some that were shipped in 2002 – well after Mr. Hickey's discharge. Several of the plants that are generating the waste loads are known generators of hazardous

waste, but Metro Enviro Transfer states it does not know whether the industrial waste it accepted from these plants contained hazardous waste. The health and safety of residents of the Village of Croton-on-Hudson was placed in jeopardy by these multiple violations of the special use permit and of the DEC permit at a facility that is designed to accept only C&DD.

The Board is also concerned that Allied deliberately diverted this industrial waste to another transfer station (in Mt. Kisco) that was not permitted to accept it, and then disposed of it at a landfill (in Ohio) that was not authorized to take it, all in contravention of permit conditions. Such deliberate serial disregard of permit conditions and governing law is intolerable.

The violations relating to lack of training are not merely technical transgressions. The training was designed, among other things, to ensure that Facility personnel would exclude unauthorized waste, and would otherwise fully comply with the special use permit.

The deliberate misreporting of daily tonnage figures in 2000 and the inability of the applicant to reconcile tonnage figures in 2001 is also a major issue. The capacity limit relates to the size of the facility, and to the volume of truck traffic that will travel to the Facility. Thus it is designed to protect the health and safety of the community.

This Board finds that since March 2000, when Metro Enviro Transfer took over the Facility, the terms and conditions of the special permit have been violated on multiple occasions and in numerous ways. Metro Enviro Transfer has repeatedly offered words of assurance to this Board that, while the Facility did not comply in the past, it will comply in the future. Further violations have all too frequently negated the effect of those assurances. The Board has reached the point where it can no longer rely on the present assurances of Metro Enviro Transfer that things will improve in the future. A constant stream of violations – some of them disclosed only because of the ongoing investigation of the federal court monitor – establish that, after almost three years, Metro Enviro Transfer and its parent company, Allied, have not established either the mechanisms or the culture required for environmental compliance. The time has come for the Village Board to take decisive action to fulfill its duty to protect the health and safety of the community.

In accordance with Chapter 230-56 of the Village Code, the Board declines to grant any further extensions of the existing permit or grant the current application for renewal of the permit. The Facility is ordered to cease accepting waste upon the expiration of the current permit at midnight on January 21, 2003.

On January 22, Metro Enviro Transfer Transfer LLC shall commence closing the Facility in accordance with the closure plan approved under the DEC permit. All waste shall be removed from the facility by 5:00 p.m. on January 28, 2003. The Facility shall be fully secure at all times to prevent illegal dumping.